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Reply to
Nashville Office

August 27, 2004

Chairman Pat Miller
Attn: Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

RE: Petition of On-Site Systems, Inc to Amend its Certificate of Convenience and
Necessity
Docket 03-00329 & Docket 04-00045 (consolidated)

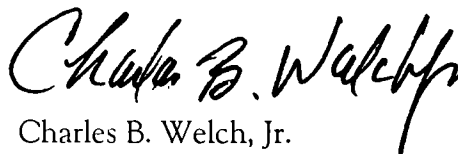
Dear Chairman Miller:

Please find enclosed one (1) original and fourteen (14) copies of East Sevier County Utility District's Reply Memorandum of Law in Opposition to the Grant of a Certificate of Convenience and Necessity for the Geographic Area Known as Sevier County, Tennessee in the above referenced matter. Please date and stamp a copy for our records.

Thank you for your assistance regarding this matter. If you have any questions, or if I may be of further assistance, please do not hesitate to contact me.

Very truly yours,

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC


Charles B. Welch, Jr.

CBW/ale

LATE FILED

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

PETITION OF ON-SITE SYSTEMS,)	
INC. TO AMEND ITS CERTIFICATE)	Docket Nos. 03-00329
OF CONVENIENCE AND NECESSITY)	and 04-00045 (consolidated)

**REPLY
MEMORANDUM OF LAW IN OPPOSITION TO
THE GRANT OF A CERTIFICATE OF CONVENIENCE AND NECESSITY
FOR THE GEOGRAPHIC AREA KNOWN AS SEVIER COUNTY, TENNESSEE**

Comes now East Sevier County Utility District (“District”), by and through counsel, and, in conformance with the request of Randal Gilliam, the appointed Hearing Officer in this Contested Case, the District tenders this brief in response to the brief of Tennessee Wastewater Systems, Inc. (“Tennessee Wastewater”), filed on August 13, 2004.

A. Testimony Is Not Necessary in Order to Object to the Grant of Tennessee Wastewater’s Petition.

To assert that “no testimony was introduced by the Intervenors in this case objecting to the grant of the Petition” is oxymoronic. That is, an “objection” is a legal matter or assertion, while “testimony” is an evidentiary matter. The mere fact that the District, the City of Pigeon Forge (“City”), and Integrated Resources Management, Inc. (“IRM”) intervened in this cause, objecting to the issuance of the broad, geography-based Certificate of Convenience and Necessity (“CCN”) is all that is required to note an “objection.” No testimony is required on the part of any of the District, the City, or IRM

to object to the issuance of the proposed CCN. While “testimony” might go to the factual bases for the issuance of the requested CCN, “testimony” is not required to lodge an objection.

What is required, however, and where Tennessee Wastewater fails in this cause, is that Tennessee Wastewater is required by statute to demonstrate that the issuance of the proposed CCN is required by the present or future public convenience and necessity. Tenn. Code Ann. 65-4-201. While the testimony of Mr. Pickney may be uncontradicted, as asserted in Tennessee Wastewater’s post-hearing brief, because that testimony fails to establish literally any basis as to how the public convenience and necessity requires the grant of this geography-based CCN, contradictory testimony is irrelevant. As discussed in the District’s brief filed on August 13, as well as in the City’s brief filed on the same date, Tennessee Wastewater has not satisfied its burden of proof, and, therefore, this petition must be denied.

B. Nothing in the Record Establishes that a Public Need Exists for the Territory Sought by the Company in its Petitions.

The testimony in the record fails to demonstrate or even allege any basis for the establishment of “public convenience and necessity” current or in the future.

Again, this is well documented not only in the District and the City’s post-hearing briefs filed on August 13, 2004, it was also amply demonstrated by the dialog between Charles Pickney and Hearing Officer Gilliam at the hearing on this cause conducted on

July 13, 2004. See, Transcript of Proceedings, July 13, 2004, at pp. 26-27, wherein Hearing Officer Gilliam questioned Mr. Pickney regarding the bases for the request for this CCN, specifically inquiring whether there was any basis other than convenience to Tennessee Wastewater and/or convenience to developers in Sevier County, Tennessee. As the transcript reflects, Mr. Pickney could offer no other basis.

Mr. Pickney has asserted time delays in obtaining CCNs from the TRA, as well as the cost of making application for CCNs on a development-by-development basis as the “public” convenience and necessity requiring the issuance of this broad, geography-based CCN. In fact, a review of the records of the TRA indicates that CCNs are routinely granted in 60-90 days. See, TRA Docket Nos. 01-00424, 01-01128, 04-00053, and 04-00054, all of which were applications for development-specific CCNs, and all of which were granted within 60-90 days.

Tennessee Wastewater asserts that a further disservice to the public is the time delay involved in the event of an intervention in one of its petitions. The District believes the intervention process is a safeguard to the public put in place by the rules of the TRA to prevent just such practices as are taking place in this cause. The intervention process exists to assure that a full and complete development of all facts and law with respect to any petition are considered by the TRA prior to granting a CCN. For Tennessee Wastewater to hold up the intervention process as contrary to the public convenience and necessity is an ultimate statement of arrogance, and says to the TRA that Tennessee

Wastewater should not be burdened with the procedural safeguards established for the protection of the public. Indeed, that is the very position taken by Tennessee Wastewater in this cause—Tennessee Wastewater should not be required to go through the long-established practice of obtaining a CCN on a project-specific basis. Taking away this important right of the public to intervene with respect to any particular development, as will be the result if this broad, geography-based CCN is granted, is a usurpation of the provisions of the Tennessee Rules and Regulations, the Uniform Administrative Procedures Act, and the Tennessee Code, all of which exist for the protection of the public.

Moreover, and notwithstanding the assertion of Tennessee Wastewater in its post-hearing brief, with respect to costs of the petitions (See, post-hearing brief of Tennessee Wastewater, p.8), a more detailed review of certain of Tennessee Wastewater's applications indicate that Tennessee Wastewater does not bear the cost of these applications. Attached hereto as Exhibit A is a true and correct copy of a letter from Mr. Pickney in TRA Docket No. 01-00423, wherein Mr. Pickney asserts to the TRA that Tennessee Wastewater does not pay for the applications, but causes the individual developers of each project to bear that cost. Again, cost and convenience to the developer does not translate into the "public convenience and necessity" required to be demonstrated by Tennessee Wastewater for the issuance of this CCN. Beyond that, whether Tennessee Wastewater is paying the cost of the petitions, or the individual

developers are paying the cost of the petitions, is not probative as to public convenience and necessity.

This appears to be inconsistent with Mr. Pickney's testimony, under oath, as well as the arguments set forth in Tennessee Wastewater's post-hearing brief that Tennessee Wastewater and its other ratepayers bear the cost of these applications.

C. The Grant of the Petitions Will Have No Effect on Efficiencies in the Maintenance and Operation of the Decentralized Wastewater Treatment Systems.

The assertion that efficiencies in maintenance and operations of these decentralized wastewater treatment systems is specious; particularly given that Tennessee Wastewater has no employees and engages the services of independent contractors to provide maintenance and operational oversight. Unless Tennessee Wastewater causes its independent contractors to agree to non-competition agreements (on their face, anti-competitive), there is no reason the same independent contractors cannot provide maintenance and operational skill for other wastewater treatment plant operators for various sites within the service area sought by Tennessee Wastewater in this petition.

Additionally, Tennessee Wastewater tendered no proof that as to how maintenance and operations would be more efficiently undertaken in the event Tennessee Wastewater receives the monopolistic CCN it is requesting. At the hearing on July 13, 2004, Mr. Pickney simply asserted that such would be the case. Again, given that the burden of

demonstrating that public convenience and necessity “requires” the issuance of this CCN, and failing to carry that burden, Tennessee Wastewater’s petition should be denied.

D. The Grant of the Proposed CCN Will Have an Anti-Competitive Effect on the Provision of Wastewater Treatment Services in Sevier County.

Tennessee Wastewater’s assertion that the denial of this geography-based CCN will leave but a single choice for the provision of wastewater treatment services in the proposed service area is absurd. On page 10 of its post-hearing brief, Tennessee Wastewater states, “If a developer desires sewer service within the area sought in this case, the developer purportedly has only one choice, East Sevier County Utility District.” If nothing else, the fact of intervention by IRM indicates interest if not desire on the part of another public utility to provide service within the proposed service area. Additionally, there are other utility districts serving areas of Sevier County which may or may not be willing to provide such service. Tennessee Wastewater has not introduced any evidence to the effect that no other service providers are available, and cannot make such an assertion in its brief.

Indeed, the two letters introduced as exhibits to the original petition in this cause do not deny potential interest on the part of the City of Pigeon Forge or Sevier County to provide such services.

The letter from Larry Waters, County Mayor for Sevier County, states that Sevier County does not presently have plans to provide municipal or county sewers, while the

letter from John Jagger, Community Development Director for the City of Pigeon Forge reveals no plans at all, and simply takes a neutral stance on the matter. Tennessee Wastewater cannot read into those responses and then assert the position that a developer would have only one choice for wastewater treatment services within the proposed service area.

E. The TRA Has the Authority to Consider Whatever it Sees Fit, Within the Appropriate Evidentiary Standards, in Making A Determination as to Whether the Public Convenience and Necessity Requires the Issuance of the CCN Sought by Tennessee Wastewater in This Cause.

If this were the case, which is specifically denied, there would be no point to the intervention process, and nothing for the TRA or a hearing officer to consider in a contested docket, unless the intervenor was a public utility. The petitioning utility's ability to provide the contemplated service, and not the public convenience and necessity, would be the sole criterion on which a determination was based, unless the intervenor was a public utility. If this were the law, the intervention process could be streamlined, obviating the need for pleadings, proof, and argument in the event the intervenor was not another public utility. All that would need to be presented would be proof that the petitioning utility was capable of providing the services covered by the CCN (which, by acknowledging that it has but a single employee, Tennessee Wastewater has failed to do).

No law is cited for the proposition that the sole consideration is Tennessee Wastewater's ability to provide the service because that is not the law. As stated in the

City's brief filed on August 13, 2004, the General Assembly demonstrated a "clear intent to vest in the [TRA] practically plenary authority over the utilities within its jurisdiction."

BellSouth Advertising & Publishing Corp. v. Tennessee Regulatory Authority, 79

S.W.3d 506, 512-513 (Tenn. 2002). The TRA, and in this case its Hearing Officer, can and should consider whatever is relevant in making a determination of whether the public convenience and necessity requires the issuance of the broad, geography-based CCN sought by Tennessee Wastewater in this cause, and based on the lack of proof as to how the convenience and necessity of the public requires the issuance of this CCN, combined with the positions of the District and the City of Pigeon Forge, should deny Tennessee Wastewater's request.

CONCLUSION

Wherefore, East Sevier County Utility District respectfully requests the Hearing Officer deny Tennessee Wastewater's request for a geography-based CCN for the entirety of Sevier County, as:

- a) Tennessee Wastewater has failed to show how such a CCN is required by the present or future public convenience and necessity;
- b) the only statutory criteria construing "public convenience and necessity" would require the denial of the requested CCN;
- c) such an expansive, geography-based CCN is anti-competitive and is counter to the best interest of the public; and

d) a broad, geography-based certificate is not justified in light of Tennessee
Wastewater's decentralized, project-specific operations.

Respectfully submitted this 27th day of August, 2004.

*Mark Jendrek / with permission
by CBN*

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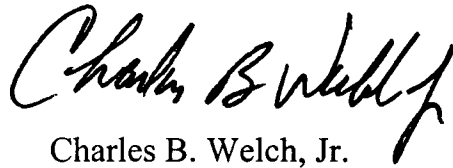
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document has been served upon the following persons by hand delivery or by United States Mail, with proper postage thereon.

Donald L. Scholes
Branstetter, Kilgore, Stranch & Jennings
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Nashville, Tennessee 37201-1631

G. Scott Thomas
Bass, Berry & Sims
AmSouth Center
315 Deaderick Street, Suite 2700
Nashville, Tennessee 37238-3001

This 27th day of August, 2004.


Charles B. Welch, Jr.

ON-SITE SYSTEMS, INC.

A PUBLIC UTILITY CO. 20 20
01 JUN 7 PM 4

EXECUTIVE SECRETARY
EXECUTIVE SECRETARY

June 7, 2001

Mr David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

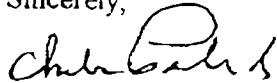
RE Docket # 01-00423 - Petition of On-Site Systems, Inc to amend its Certificate of Convenience and Necessity - Wears Valley

Dear Mr Waddell

In response to your request dated May 21, 2001 to clarify some issues presented by the staff on the above-referenced case Our response is as follows

- 1 Please find attached two letters from the City of Pigeon Forge City Manager's Office and Sevier County's Executive Office stating that they have no plans to provide service for the next twelve months
- 2 The expenses that On-Site Systems incurs for the filing of petitions are paid by the developer of each territory Per the contract with the developer, the cost of construction is increased by ten percent (10%) to cover costs such as securing the service area, reviewing the engineering design and inspecting the construction A copy of the contract is attached for your review

Sincerely,



Charles Pickney, Jr , President
On-Site Systems, Inc

7638 River Road Pike Nashville TN 37209-5733
(615) 356-7294 Fax (615) 356-7295

